

HOUSE BILL REPORT

SSB 5295

As Passed House:

February 28, 2010

Title: An act relating to the unanimous recommendations of the public records exemptions accountability committee.

Brief Description: Implementing unanimous recommendations of the public records exemptions accountability committee.

Sponsors: Senate Committee on Government Operations & Elections (originally sponsored by Senators Kline, Oemig, Rockefeller, Holmquist, King, Hatfield and Hobbs).

Brief History:

Committee Activity:

State Government & Tribal Affairs: 2/18/10, 2/19/10 [DPA].

Floor Activity:

Passed House: 2/28/10, 96-0.

Brief Summary of Substitute Bill

- Addresses unanimous recommendations from the Public Records Exemption Accountability Committee.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: Do pass as amended. Signed by 7 members: Representatives Hunt, Chair; Appleton, Vice Chair; Armstrong, Ranking Minority Member; Alexander, Flannigan, Miloscia and Taylor.

Staff: Pam Madson (786-7111).

Background:

The Public Records Act (PRA or Act) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be

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interpreted liberally while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

In 1972 voters approved Initiative 276 (I-276). Initiative 276 addressed, among other issues, access to public records. At the time I-276 was passed, there were 10 exemptions from public records disclosure. Today, there are over 300 specific references in the PRA or other statutes that remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or designate certain information as confidential.

In 2007 the Legislature created the Public Records Exemption Accountability Committee, known as the Sunshine Committee (Committee), to review all public records exemptions and make annual recommendations to the Legislature whether to maintain the exemption, modify the exemption, schedule it for sunset review at some later time, or terminate the exemption.

In November 2008, the Committee made 12 recommendations, eight of which were unanimous. The unanimous recommendations covered the following:

- child mortality reviews;
- agricultural exemptions;
- State Investment (SI) Board criminal history checks;
- employee wellness program information about individuals;
- application materials for two state agency directors;
- personal information of participants in transportation programs;
- identity of persons and current investigations related to workplace discrimination; and
- and maritime employment salary survey data.

Summary of Bill:

Based on the unanimous recommendations of the Committee, the following changes are made to public disclosure and copying of the following records.

Child Mortality Reviews - The Committee agreed with the goals to exempt certain documents from disclosure used for child mortality reviews but felt the exemptions were broader than necessary. The statute governing the confidentiality of child mortality reviews is modified. Health care information collected as part of a child mortality review is not subject to disclosure. Witness statements, documents collected from witnesses or documents prepared solely for the mortality review are not subject to disclosure. Health departments may continue to disclose statistical compilations and reports that do not identify individual cases or sources.

The exemption contained in the PRA is modified and makes reference to the exemption as described in the statute on child mortality reviews. Further, if an agency provides copies of exempt documents to another agency, the documents remain exempt to the same extent as with the originating entity. The documents may be marked as exempt to provide notice to the receiving agency, but this marking is not determinative of the documents actual exemption from disclosure.

Employee Wellness Programs - The Committee recommended that this exemption be maintained but clarified. The exemption is moved into the PRA. All documents received under a wellness program are exempt from public disclosure, except statistical reports that do not identify individual participants. The statute establishing a state wellness program is modified to apply to all state and local government wellness programs.

Agricultural Exemptions - The Committee recommended that exemptions referenced in the PRA by a statutory reference to other laws include a brief description of the exemption, and any conflict between the brief description and the reference should be resolved in favor of the statute to which the PRA refers.

Descriptions of the following agricultural exemptions are included in the PRA: (1) information on the purchase, sale, or production of individual American ginseng growers or dealers; (2) information for issuance of certificates of compliance for packers and shippers of fruits and vegetables; and (3) financial statements used to determine whether an applicant meets the minimum net worth requirements to operate a public livestock market.

Candidate Lists - The Committee recommended that exemptions for application materials for the directors of the Workforce Training and Education Coordinating Board (WTEC Board) and the Recreation and Conservation Office (RCO) be eliminated. The lists of candidates provided to the Governor for the WTEC Board and the RCO are subject to public disclosure.

Personal Information of Participants in Transportation Programs - The Committee recommended modifying the exemption for personal identifying information of persons who obtain and use transit passes and other forms of fare payment. The exemption for personally identifying information of persons who acquire and use transit passes is modified. This information may be disclosed to entities who are financially responsible for the payment of the fare program for purposes of preventing fraud, or to the news media when reporting on public transportation or public safety. It may also be released to law enforcement agencies if accompanied by a court order which is consistent with another exemption for persons using devices to facilitate paying tolls.

Investigations Related to Workplace Discrimination - The Committee recommends that exemptions providing confidentiality for those who seek advice from an agency on potential discrimination and for the confidentiality of a current discrimination investigation be retained but clarified. This exemption is clarified in that a current investigation means an active and on-going investigation.

Criminal History Records Checks - The Committee recommended no change to the exemption for criminal history records checks for exempt staff positions at the SI Board. A cross-reference is added to the PRA describing the exemption for criminal history records checks for Board staff finalist candidates for the State Investment Board.

Maritime Employees - The Committee recommended that the exemption for salary and benefit information for maritime employees collected from private employers for the maritime employment surveys found in statutes on marine employees be more clearly described under the PRA. The cross-reference under the PRA is clarified to describe the

exempt information as information on salary and benefits for maritime employees collected from private employers.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) These are eight recommendations that are unanimous from the Sunshine Committee that is charged with reviewing all exemptions to public disclosure. These recommendations re-evaluate the issues of privacy versus the public's right to know everything there is to know about government except for the very specific and narrowly drawn exemptions. The committee's approach was that the public has a right to know about government but not necessarily everything about the participants in government.

(In support with amendment) The bill added a provision that intended to look to the clearest explanation of an exemption in the law but the language in the bill doesn't quite get there and should be removed. Language that would allow the news media to obtain information about transit pass users when reporting on public transportation or public safety was removed in the bill and should be reinstated.

(Opposed) None.

Persons Testifying: (In support) Senator Kline, prime sponsor; and Tim Ford, Office of the Attorney General.

(In support with amendment) Rowland Thompson, Allied Daily Newspapers.

Persons Signed In To Testify But Not Testifying: None.